

DOING BUSINESS WITH NATIVE AMERICAN TRIBAL CORPORATIONS:

Some Competitive Advantages

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In an expanding global economy, investors are looking for competitive advantages and more advantageous business environments. Businesses and investors might be surprised to discover that a favorable partnership might exist in their own backyard. Under the U.S. Constitution, Native American Indian tribes are recognized as semi sovereign nations, and a business venture with an Indian tribe can offer many advantages.

Native American Indian tribal governments have the authority to establish their own laws and regulations. Most tribes have wholly-owned tribal corporate entities that enjoy most of the same legal protections and advantages as the tribe itself. In addition, the federal government has enacted a broad array of financial incentives to encourage investment in economic development projects in economically distressed areas in general, and on tribal lands specifically.

There are over 560 Native American tribal governments in the United States, and there are a number of factors that can make Indian tribes and their wholly-owned corporations very attractive for your business partnerships and investments.

TRIBES ARE SOVEREIGN GOVERNMENTS WITH SOVEREIGN CORPORATIONS

- > ***Tribal government owned corporations.*** Tribal governments can charter their own tribal government-owned corporations under tribal law or federal law (Section 17). Tribally chartered enterprises hold the same status as the tribe itself for purposes of federal income tax exemptions and sovereign immunity from suit. Tribal governments can promulgate their own regulations governing economic activity on their lands. Further, tribal governments and their tribal corporations are generally not subject to state laws.
- > ***Tribal corporations create governmental revenue.*** Unlike most governments, due to a variety of legal and practical impediments, Native American tribal governments do not have significant tax-based revenue to run their governments and provide governmental services. (Tribal land is held in "trust" by the federal government and as such is not taxable; tribal unemployment rates are very high so there is no real opportunity for tribal income tax; and, sales taxes are often regressive and therefore not often used.) Therefore, tribal governments create wholly-owned

tribal corporations and own a wide variety of businesses (casinos, gas stations, hotels, etc.) in order to generate a revenue stream for their governmental services.

SOCIALLY RESPONSIBLE INVESTING

- > ***Socially responsible investing.*** Unlike a privately held company, all of the profits of a tribal government-owned corporation go back into the tribal corporation and government's budget, for education, infrastructure, winter heating assistance, etc. Many tribes have very high poverty and unemployment rates and would likely welcome outside investment. Therefore investments in tribal government-owned corporations go toward the economic empowerment of historically disadvantaged people.
- > ***Cultural cachet.*** While perhaps not a direct financial advantage, many individuals and many countries (such as Germany and Turkey) have a significant interest in Native American tribes and culture. Therefore, the idea of investing in or partnering with Native American tribal government-owned corporation has an additional marketing cachet.

FLEXIBLE REGULATORY ENVIRONMENTS

- > ***Zoning.*** Tribes are generally exempt from local, county, and state zoning and land-use restrictions and state permitting requirements.
- > ***Environmental regulations.*** Tribes can issue environmental licenses and permits in conformance with tribal and federal Environmental Protection Agency requirements.
- > ***Product liability.*** Tribes can structure product liability laws for its courts to cap liability for concerns that might require this type of protection.

FEDERAL AND STATE TAX EXEMPTIONS

- > ***No federal and state income tax.*** Like any government-owned entity, tribes and tribal enterprises are exempt from federal and state income taxes. If a business entity is formed between a tribe and a non-tribal company, the portion which is owned by the tribe (or the tribal corporation) is in most cases exempt from federal and state income taxes.
- > ***No state sales tax.*** Most tribes do not have their own sales taxes. In addition, most states have exemptions from state sales taxes for sales to government entities.
- > ***No state property tax.*** If the land is located on the Indian reservation and is owned by the tribe in "trust," then the land is not subject to state property taxes.
- > ***No state property improvements tax.*** Tribal trust lands and tribal improvements on such lands are exempt from state taxation. Tribes can take additional regulatory steps to provide non-tribally owned improvements the same exceptions.

FEDERAL TAX CREDITS

- > ***Investment Tax Credit (New Market Tax Credits).*** New Markets Tax Credits are available for investors that make capital investments on Indian reservations, providing tax credits of up to

39 percent of the entire amount of the investment. The tax credit is spread over seven years, 5 percent of the investment for the first three years, and 6 percent of the investment amount can be claimed the next four years.

- > ***Indian wages and insurance tax credits.*** Employers can receive a tax credit of up to 20 percent of wages and health insurance for qualified employees living on Indian reservations.
- > ***Equipment and buildings accelerated depreciation.*** Businesses can claim depreciation at twice the normal rate for locating equipment and buildings on tribal land.

FEDERAL GOVERNMENT CONTRACTING PREFERENCES

- > ***Preferences on Bureau of Indian Affairs contracts (Buy Indian Act).*** Because of the unique treaty responsibilities of the U.S. Bureau of Indian Affairs (BIA), the BIA has the authority to give preferences to Indian and tribally-owned companies in its procurement contracts.
- > ***Preferences for tribal government owned corporations (8(a) Preferences).*** The Small Business Administration's "8(a) program" authorizes preferences for minority-owned small businesses in bidding for federal contracts. However, if the company is owned by a tribal government, it receives additional benefits, such as not being subjected to the lower contract amount caps.
- > ***Preferences for Indian reservation based businesses (HUBZone Preferences).*** If a small business is located on Indian lands and 35 percent of its employees reside on the reservation, the company is eligible for HUBZone preferences in the awarding of federal contracts. Benefits include competitive and sole source contracting and a 10 percent price evaluation preference in full and open contract competitions.

SUBSIDIZED FINANCING

- > ***Incentives for foreign investors (Immigrant Investor/EB-5 Visas).*** With this U.S. government program, foreign investors receive American visas in return for investments that create 10 new jobs. Generally the investment required is \$1 million. However, in rural areas and areas of high unemployment, which includes many Native American reservations, the investment required is only \$500,000.
- > ***Tax exempt bonds (Tribal Economic Development/TED Bonds).*** There are annual IRS allocations available for tribes to issue governmental bonds which are tax exempt for investors. Bond proceeds that are used for projects must be located on tribal lands, provide essential governmental functions, and not involve gaming, but otherwise the bonds are quite flexible.
- > ***USDA low interest loans for community facilities.*** The USDA provides low interest loans directly, and some grants, for tribal governments to build essential community facilities in rural areas (which includes most Indian reservations). Eligible facilities include: hospitals, clinics, airport hangars, child care centers, fire departments, police stations, prisons, schools, and local food systems.
- > ***USDA loan guarantee for rural businesses. (Business & Industry).*** The USDA provides loan guarantees ranging from 60-80 percent of a privately financed loan. The business must be

located in a rural area (less than 50,000 inhabitants), for which most Indian reservations qualify. The loan guarantee can be used for: business conversion, land, rights-of-way, buildings, equipment, inventory, and debt refinancing and business acquisitions when it saves or creates jobs.

- > ***BIA loan guarantees for Indian reservation projects.*** Tribes can obtain a loan guarantee from the Bureau of Indian Affairs for up to 90 percent of a private loan. The business must be located on or near an Indian reservation and must contribute to the economy of the reservation. The tribe must have at least 20 percent equity in the business. The loans may be used for a variety of purposes including operating capital, equipment purchases, business refinance, building construction, and lines of credit.

CONCLUSION

Each Native American Indian tribe and tribal corporation has its own unique culture, values, and goals for doing business. There are a number of competitive advantages available to investors and businesses partnering with Indian tribes and tribally owned corporations. Businesses that fully appreciate the uniqueness of working with tribes can thrive doing business in Indian Country, and do good while doing well.

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